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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,132	10/16/2001	Steven Curtis Zicker	IR 6562-02	3795

23909 7590 05/01/2002

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EXAMINER

SPIVACK, PHYLLIS G

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 05/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/978,132

Applicant(s)  
Zicker et al.

Examiner  
Phyllis Spivack

Art Unit  
1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other:

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Claims 1-29 are presented and represent all of the claims under consideration.

The undersigned Examiner supports the goal of the Office to advance prosecution as expediently as is reasonably possible. Cooperation is requested with respect to the timely submission of any references deemed pertinent to the present application along with Form PTO-1449.

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paul et al., WO 94/02036.

Paul teaches nutritional, antioxidant formulations for warm blooded animals to provide sustained energy, particularly in old age, comprising antioxidants, such as l-carnitine, lipoic acid, vitamin C and vitamin E, in addition to components necessary to meet ordinary nutritional requirements. Such components that meet ordinary nutritional requirements include anabolic nutrients, carbohydrates, proteins, lipids, vitamins and minerals. See page 11, line 10, and page 12, lines 5, 8, 9. It is noted the open language of the present claims does not exclude the addition of any of a number of other active nutrients in the formulations. The claims differ in that Paul

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does not limit his disclosure to companion pets. Rather, Paul's teaching includes warm-blooded animals of which cats and dogs would have reasonably been included. Further, Paul does not specifically direct his disclosure to a deterioration of mental capacity. However, one skilled in the veterinary art would have been motivated to administer a nutritional formulation comprising antioxidants to inhibit the deterioration of mental capacity in view of the teachings of Paul. See, in particular, page 13, line 34, where treating old age is included in Paul's teaching. It would have been obvious in the absence of evidence to the contrary to administer antioxidants in a companion pet's diet to improve mental capacity because nutritional formulations comprising antioxidants, such as vitamin C, l-carnitine,  $\alpha$ -lipoic acid and vitamin E, provide an improved anabolic state with greater sustained energy levels. It would have been reasonable to expect such effects to result in an improvement in mental capacity. The determination of optimal concentrations of the active ingredients is a parameter well within the purview of those skilled in the art of formulation chemistry through no more than routine experimentation.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 27 is rejected under 35 U.S.C. 102(b) as being anticipated by Paul et al., WO

94/02036.

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Paul teaches nutritional formulations that meet ordinary nutritional requirements of warm blooded animals comprising antioxidants. The term "warm blooded animal" would have reasonably included a companion pet. The intended use of a composition claim confers no patentable weight to the claim.

No claim is allowed.

Any inquiry concerning this communication should be directed to Phyllis Spivack at telephone number (703) 308-4703.

April 29, 2002

*Phyllis Spivack*

PHYLLIS SPIVACK  
PATENT EXAMINER  
GROUP 1614